IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6778 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

LAXMANBHAI TUKARAM DAMRE

Appearance:

1. Special Civil Application No. 6778 of 2002

MR HARDIK C RAWAL for Petitioner No. 1

MR MUKESH H RATHOD for Respondent No. 1

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 11/03/2003

ORAL JUDGEMENT

The present petition is filed by Gujarat State Road Transport Corporation (hereinafter referred to as "the Corporation") challenging the judgement and award in Reference (LCV) No.655 of 1999 dated 8.3.2002 whereby the

learned Judge of the Labour Court, Valsad was pleased to partly allow the Reference filed by the respondent workman and ordered reinstatement on his original post with 75% back wages. The learned Judge was pleased to award 75% back wages because he deemed it fit that 25% back wages are required to be appropriated by the establishment towards the financial loss suffered by the establishment on account of the alleged misconduct of the respondent workman.

2. The facts of the case are that while the respondent workman was working as Conductor at Navsari Depot-2, on 23.10.1996 when he was on duty as conductor in the bus on the route of Valsad -- Selvas via Morkhal, it was checked at 'Kelvani' and at that time it was found that there were nine passengers in the bus. It was noticed that from a group of two female passengers who were returning to Selvas, the respondent had collected fare of Rs.5.00 and issued ticket for Rs.2.00 only and had issued ticket for luggage charged at Rs.0.40 paise. In fact, the actual bus fare for two passengers was Rs.6.00. Thus, a total amount of Rs.6.40 ought to have been charged from them. Therefore, the remaining amount of Rs.1.40 was collected from the passengers. It was also noticed that from another female passenger travelling from Kakdakopar to Galonda the respondent had collected Rs.2.00 from the place of her boarding the bus, but did not issue ticket till the bus was checked. It was also noticed that 'Way Bill' was not closed after stage no.9 till the place of checking.

3. The respondent workman was charge sheeted on 26.11.1996. Thereafter, a departmental inquiry was conducted and order dated 22.1.1998 was passed dismissing him from service. The respondent had preferred a departmental First Appeal which was dismissed on 29.4.1998. Thereafter, the respondent had preferred departmental Second Appeal which was also dismissed by order dated 30.1.1999. The respondent workman invoked jurisdiction of the Labour Court by filing reference which came to be partly allowed by the judgement and award under challenge in this petition.

4. Mr.Hardik C. Raval, the learned advocate for the petitioner corporation assailed the judgement and award of the learned Judge of the Labour Court on various grounds including that of 'misplaced sympathy' shown in favour of the respondent workman. He also submitted that this is a case wherein the learned Judge ought not to have exercised his discretion under section 11A of the Industrial Disputes Act, 1947 (hereafter referred to as

"the Act"). He submitted that the learned Judge ought to have taken into consideration the default card of the respondent workman which consisted 22 defaults, of which 16 related to financial irregularities. He submitted that the learned Judge should have refrained himself from exercising discretion under section 11A of the Act.

5. Mr.M.H. Rathod, the learned advocate appearing for the respondent workman submitted that the learned Judge after taking into consideration the facts of the case and defence put forward by the respondent workman had rightly exercised the discretion under section 11A of the Act.

5.1 Having heard the learned advocates it is deemed fit that the petition be partly allowed and the judgement and award of the Labour Court be modified. The order 'quashing the dismissal order' is upheld while order granting 75% back wages is quashed and set aside. The respondent workman must undergo some punishment for the irregularities which were held proved in the departmental inquiry. Hence punishment of stoppage of two increments with future effect is imposed. The petition is allowed. Rule is made absolute to the aforesaid extent. Mr.Raval submitted that the respondent workman be directed to file an undertaking before this Court that in future he will not indulge in such irregularities which will work as a moral constraint on the respondent workman. The respondent is directed to file an undertaking to that effect within four weeks from the date of receipt of this judgement. The petitioner corporation is directed to comply with the award within six weeks from the date of receipt of this judgement.

(Ravi R. Tripathi, J.)

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